

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
DOUGLAS R. RAILEY)

For Appellant: Douglas R. Railey, in pro. per.

For Respondent: Bruce W. Walker
 Chief Counsel

John R. Akin
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Douglas R. Railey against a proposed assessment of additional personal income tax in the amount of \$132.22 for the year 1975.

Appeal of Douglas R. Railey

The sole question for decision is whether appellant was qualified to claim head of household status for the year 1975.

Appellant was divorced in December 1974. His former wife, Sheri, received custody of their son and daughter. During the period from January 1975 to September 1975, the two children resided with appellant because their mother was ill and unable to care for them. In September 1975, the children went to reside with their mother, and they continued to live with her for the remainder of the year.

Appellant filed his 1975 California personal income tax return as a head of household, naming his son and daughter as qualifying dependents. Respondent determined that appellant did not qualify for head of household status because his children had not been members of his household for the entire year. That determination gave rise to this appeal.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code, which provides, in pertinent part:

For purposes of this part, an individual shall be considered a head of household if, and only if, such individual is not married at the close of his taxable year, and ...

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A son .. . [or] daughter ... of the taxpayer. ...

In a number of prior appeals we have held that the statutory requirement that a household be provided for the "taxable year" means the taxpayer's entire taxable year. (Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; see also Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (b) (1).) In the present case appellant's children occupied his household for approximately nine months of 1975. Although respondent's regulations make an exception in the case of a "temporary absence due to special circumstances," the record in this appeal does not indicate

Appeal of Douglas R. Railey

the existence of any special circumstances. Therefore, appellant did not qualify for head of household status in 1975, and respondent's action in this matter **must be** sustained.

Appellant has expressed his belief that to deny him head of household status in 1975 is unfair, since in fact he did maintain a household for his children for the major part of that year. Such a complaint would have to be addressed to the Legislature, as any conclusion **contrary to** the one we have reached herein would require a change in the existing provisions of the Revenue and Taxation Code.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Douglas R. Railey against a proposed assessment of additional personal income tax in the amount of \$132.22 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of August, 1978, by the State Board of Equalization.

Victor K. Kelley, Chairman
Paul H. Hester, Member
J. S. Sankey, Member
William L. Brown, Member
_____, Member